

PREDETERMINATION SETTLEMENT AGREEMENT

CP# 06-14-65877

HUD# 07-14-0518

PARTIES TO THE SETTLEMENT AGREEMENT:

RESPONDENTS

CAMPUS TOWN, LLC

327 2nd Street, Suite 200

Coralville, Iowa 52241-2694

BAXTER CONSTRUCTION COMPANY, LLC

3225 Avenue N

Fort Madison, Iowa 52627-3553

THOMAS C. PORTER

Porter & Associates Architects

1005 Cherry Street, Suite 112

P.O. Box 1292

Columbia, Missouri 65205-1292

COMPLAINANT

ANGELA WILLIAMS

Commissioner, Iowa Civil Rights Commission

400 East 14th Street

Des Moines, Iowa 50319

and

IOWA CIVIL RIGHTS COMMISSION

400 East 14th Street

Des Moines, Iowa 50319

Complainant's Allegations:

Complainant is a member of the Iowa Civil Rights Commission (ICRC). Complainant alleged Respondents designed and constructed covered multifamily dwellings in violation of the design and construction accessibility requirements of the Iowa Civil Rights Act (ICRA) and the Federal Fair Housing Act (FHA). Complainant alleged Respondents violated the "accessible entrance on an accessible route," "light, switches, thermostats, electrical outlets in accessible locations," and "usable kitchens and bathrooms" requirements of the ICRA and FHA. With regard to the interior of the dwellings, Complainant specifically alleged, in Units 109 and 215, (1) the height of the thermostat controls exceeded the maximum reachable height of 48 inches and (2) the midline of the sink over not-easily removable cabinets in each bathroom was 17.5 inches from the adjoining wall, which is less than the 24-inch minimum required for a parallel approach. With regard to the exterior or public and common use areas, Complainant specifically alleged (1) the width of the access aisle for a parking space designated for persons with disabilities was just 24 inches, which is far less than the 60-inch minimum required; (2) the length of the access aisle for that designated parking space did not extend the full length of the parking space; and (3) there was no curb cutout connecting the access aisle to the adjoining sidewalk leading to the main entrance of the building.

Description of the Subject Property

The subject property, Campus Town Apartments, located in Ankeny, Iowa, is comprised of one building with 24 units on each of four floors (96 units total) and the public and common use areas. Because all of the units are served by an elevator, all of the units are covered by the design and construction provisions of the ICRA and FHA.

The table below shows the types of units at Campus Town Apartments, as well as the number of each type.

UNIT TYPE	TOTAL PER UNIT
Three bedrooms / two bathrooms –	
ANSI Type A	1
Three bedrooms / two bathrooms –	
ANSI Type B	7
Two bedrooms / two bathrooms –	
ANSI Type B –	
“ASI #16-1 (New Kitchen Layout)”	72
Two bedrooms / two bathrooms –	
ANSI Type B –	
“ASI #16-2 (New Kitchen Layout)”	6
One bedroom / one bathroom –	
ANSI Type B	9
One bedroom / one bathroom –	
ANSI Type A	1
TOTAL	96

Respondents' Defenses:

When asked in the questionnaire what was true or false about the allegations, Respondents answered:

[Respondent Campus Town, LLC]:

Campus Town, LLC has asked Baxter Construction Company, LLC to confirm the accuracy of the allegations contained in the complaint. To date, Campus Town, LLC has no reason to believe the content of the complaint is untrue.

[Respondent Thomas C. Porter – henceforth referred to as “Respondent Porter”]

We cannot dispute any of the statements as "untrue" because we are not aware of the actual conditions on site.

[Respondent Baxter Construction Company, LLC – henceforth referred to as “Respondent Baxter”]

We are not yet certain about the truth or falsity of the allegations contained in the complaint, are in the process of confirming the allegations with field observations, and will work diligently to coordinate and accomplish any required corrective actions.

Pre-inspection modifications and retrofits

After being notified of the current complaint on June 16, 2014, and prior to ICRC's full onsite inspection on August 7, 2014, Respondent Baxter stated it completed modifications and retrofits to correct the deficiencies observed by ICRC testers as alleged in the complaint. Respondent Baxter stated it (1) removed one of the vanities and finished the flooring in the non-compliant bathrooms for the 94 ANSI Type B Units in order to create the required knee space for a forward approach by a person utilizing a wheelchair; (2) lowered all non-compliant thermostats to a height at or below 48 inches; and (3) corrected the alleged deficiencies observed by the testers in the three access aisles by (a) removing the obstruction at the end of the access aisles to extend them the entire length of the parking spaces; (b) restriping the access aisles to increase the width to 60 inches for the two “non-van” access aisles and 105 inches for the “Van-Accessible” access aisle; and (c) installing accessible curb cutouts at the sections of the sidewalks adjacent to the access aisles.

On August 7, 2014, ICRC investigators conducted an onsite inspection of Campus Town Apartments. The investigators checked the sites where deficiencies were noted in the complaint and determined the above-described retrofits and modifications described above by Respondent Baxter were indeed completed for the inspected units and the public and common use areas. The deficiencies alleged in the current complaint are no longer present, and have been corrected.

Report of Preliminary Findings:

ICRC Investigators inspected six units. The unit number and unit type inspected are listed in the table below:

UNIT #

UNIT TYPE

102 Three bedrooms / two bathrooms –

ANSI Type A

109 One bedroom / one bathroom –

ANSI Type A

215 Two bedrooms / two bathrooms –

ANSI Type B –

“ASI #16-1 (New Kitchen Layout)”

224 Three bedrooms / two bathrooms –

ANSI Type B

314 Two bedrooms / two bathrooms –

ANSI Type B –

“ASI #16-2 (New Kitchen Layout)”

409 One bedroom / one bathroom –

ANSI Type B

After conducting an onsite inspection of the units listed in the table above and the public/common use areas surrounding the 96-unit apartment building at Campus Town Apartments, ICRC Investigators found and reported the following deficiencies:

1) The property has four mailbox kiosks located to the northeast of the apartment building. All of the mailboxes in all of the kiosks need to be accessible, as the building has an elevator serving all units. There is enough clear floor space in front of each mailbox kiosk to enable tenants using a wheelchair to make a parallel approach. Such an approach allows for a 48-inch maximum reach height, as specified in ANSI 2003. The height of the keyholes in the top three rows of mailboxes in all four kiosks was measured at higher than 48 inches. Therefore, the mailboxes with keyholes at a height greater than 48 inches are inaccessible and therefore unusable, according to the maximum reach parameters of ANSI 2003

However, Respondent Baxter maintains the local postmaster has never delivered mail to any of the mailboxes in any of the kiosks because the apartment building is considered “student housing.” Respondent Baxter stated the Postmaster based his decision on the characteristics of the property and his application of the United States Postal Services (USPS) regulations, which does not allow mail delivery to mailbox kiosks at such properties. Onsite Property Manager Trista Sanchez submitted a copy of an email from the Postmaster, which reports his reasons for not delivering mail to the residents of this apartment building. The email reads:

Per POM 631.52 states that Post Office personnel do not distribute mail into apartment-style mailboxes for student housing. Our definition of student housing is single or multi-room units that may share or have access to centrally located kitchens, bathrooms, showers, or social or common areas. Whether located on or off campus, and regardless of private ownership, such buildings are nevertheless dormitories and the owner is responsible for the final delivery of student mail.

The factors that determined Campus Town is student housing was based upon:

Web site- advertised as student housing, depicting student activities, bus service to DMACC, study rooms etc.

DMACC [Des Moines Area Community College] - lists Campus Town as alternative student housing on their web site.

Newspaper articles: Des Moines Register article about Campus Town and how it would alleviate student housing shortage at DMACC

All of the above point to the primary function for this complex and reasoning for its construction was DMACC student housing.

Sanchez told ICRC investigators that she tells all tenants to rent a post office box because USPS will not deliver mail onsite. Sanchez also told the investigators she and others associated with Campus Town Apartments have addressed the issue with certain members of Congress. Their goal is to overturn the Postmaster's decision not to deliver mail to the subject property. If mail delivery to Campus Town Apartments is ever started, Respondents will need to ensure none of the mailbox keyholes are higher than 48 inches.

2) Section 4.13 of ANSI 1986 requires the opening force for exterior-hinged doors to be no greater than 8.5 pounds and for interior-hinged doors, no greater than 5 pounds. The door located at the entrance to the rooftop patio is an exterior-hinged door and, as determined by ICRC investigators, required 20.5 pounds of force to open. The door to the basketball court, an interior-hinged door, required 10 pounds.

The entrance doors to the rooftop patio and the basketball court require too much force to open, making them inaccessible.

3) Respondent Baxter stated each of the front or entrance doors to the units in the property are 20-minute rated fire doors, and are therefore exempt from the maximum-force requirements. According to the Ankeny Municipal Code, the City of Ankeny, Iowa has adopted the 2012 International Fire Code (IFC). With regard to opening force, the IFC states:

1008.1.3 Door opening force. The force for pushing or pulling open interior swinging egress doors, other than fire doors, shall not exceed 5 pounds (22 N). For other swinging doors, as well as sliding and folding doors, the door latch shall release when subjected to a 15-pound (67 N) force. The door shall be set in

motion when subjected to a 30-pound (133 N) force. The door shall swing to a full-open position when subjected to a 15-pound (67 N) force.

In application of this code, Ankeny Division Chief Life Safety/Fire Marshall Craig Frasier told the ICRC investigators that the minimum force requirement to open a 20-minute rated fire door is 5 pounds.

The table below shows the force required to open the interior-hinged front door to each of the inspected units:

UNIT NUMBER POUNDS OF FORCE REQUIRED TO OPEN DOOR

102	27
109	12.5
215	12
224	10
314	12
409	10

Based on the information collected, the force required to open the front door for each of these units tested exceeded the 5-pound maximum allowed by ANSI for interior-hinged doors. Setting the opening force for these doors at 5 pounds would allow Respondents to meet the accessibility requirements of the FHA, ICRA, and the fire-safety requirements of the City of Ankeny.

Respondents' Response to Report of Preliminary Findings:

Respondents submitted the following responses to the reported deficiencies:

- 1) Respondents stated in their written responses:

In regard to the mailbox heights, the existing mailboxes shall be modified to comply with the 48" height in the event mail is ever allowed to be delivered to the mailbox kiosks onsite, as required.

2) Respondents disagree with ICRC's determination for items #2 and #3 above that the doors to the basketball court, rooftop patio, and the individual units must meet the maximum door-opening force requirements of 5 pounds for interior-hinged doors and 8.5 pounds for exterior hinged doors. Respondent Baxter stated:

It is our position that the noted doors all comply with applicable codes, with exception only to the entry door to Apartment # 102, and the exterior in-swinging door entering the building from the Gym Rooftop patio area. Both of these doors have been adjusted to comply with the 2009 IBC/IFC Section 1008.1.3. requirements.

Respondent Baxter submitted photographs and statements via email, which indicate the opening force for the door to the rooftop patio and the door to Unit 102 have both been reduced to 10 pounds.

As per ANSI 2003 and Title III of the ADA, Respondent Porter stated fire doors "shall have the minimum opening force allowable by the appropriate administrative authority." Respondent Porter maintains the appropriate administrative authority is Jeff Junker, who is the Building and Zoning Administrator for the City of Ankeny. Respondent Porter quoted Section 1008.1.3 of the International Building Code (IBC) and International Fire Code 2009 as follows:

The force for pushing or pulling open interior swinging egress doors, other than fire doors, shall not exceed 5 lbs. For other swinging doors, as well as sliding and folding doors, the door latch shall release when subjected to a 15 lb. force. The door shall be set in motion when subjected to a 30 lb. force. The door shall swing to a full-open position when subjected to a 15 lb. force.

Respondent Porter stated exterior doors that have closers, such as the door to the rooftop patio, are permitted to have higher opening forces. In support, Respondent Porter submitted a copy of the commentary for Section 1008.1.3 of the IBC 2009. The relevant excerpt reads:

The 5-pound (22 N) maximum force for pushing and pulling interior swinging doors without closers that are part of the means of egress inside a building is based on that which has been deemed appropriate

for people with a physical limitation due to size, age or disability. The operating force is permitted to be higher for all exterior doors[.]

[E]xterior doors are exempted because air pressure differentials and strong winds may prevent doors from being automatically closed.

Assessment of Deficiencies:

Respondent Porter stated all units at the subject property complex were built in accordance with the requirements of the 2009 International Building Code [IBC 2009], which is not one of the safe harbors recognized by HUD. However, Respondent Porter averred the IBC 2009 looks to the ANSI 2003 for guidance in meeting the technical requirements. ANSI 2003 is a HUD-recognized safe harbor, as long as it is used in conjunction with the FHA, HUD regulations, and the Guidelines. Therefore, in order to determine compliance with the ICRA and FHA, ANSI 2003 will be used to assess compliance with the technical requirements [i.e., the dimension requirements] and the FHADM will be used to assess compliance with the scoping requirements [i.e., what needs to be accessible]. In the event ANSI 2003 does not provide guidance on the technical requirements for a particular feature required to be accessible by the FHADM, then ANSI 1986 will be consulted for guidance.

Following is the assessment of the reported deficiencies, based on the scoping requirements of FHADM and the technical requirements of ANSI 2003 or ANSI 1986:

- 1) In the event mail starts to be delivered to the mailbox kiosks, ICRC concurs with Respondents' proposal to reduce the height of the keyholes for all mailboxes at the kiosks to 48" or less.

- 2) ICRC concurs with Respondents' modification to reduce the force required to open the exterior and fire doors at the subject property building by adjusting the hardware such that they do not require more than 15 pounds of force to open. In response to additional questions about fire doors, Fraser stated fire doors typically require more than 5 pounds of opening force to properly latch closed, as required by the IFC 2009 and 2012. Fraser directed ICRC investigator to contact Junker, the Building and Zoning Administrator for the City of Ankeny, for additional information on fire door requirements.

Junker told the ICRC investigators that fire and exterior doors that have closers are allowed to have door-opening forces greater than either the 5-pound or 8.5 pound maximums. Although the IFC 2009 does not have a “minimum” allowable door opening force, Junker stated he has observed that door-opening forces that are significantly less than 15 pounds are frequently insufficient to allow (1) fire doors to close due to the opposing pressures created by combustion gases and (2) exterior doors to close because opposing pressures created by the wind.

Predetermination Settlement Agreement

A complaint having been filed by Complainant against Respondents with ICRC under Iowa Code Chapter 216 and there having been a preliminary inquiry, including an on-site inspection of the subject property, the parties do hereby agree and settle the above-captioned matter in the following extent and manner:

Acknowledgment of Fair Housing Laws

1. Respondents agree there shall be no discrimination, harassment, or retaliation of any kind against any person for filing a charge under the ICRA; or because of giving testimony or assistance, or participating in any manner in any investigation, proceeding or hearing under the ICRA; or because of lawful opposition to any practice forbidden under the ICRA.
2. Respondents agree to refrain from committing any act of discrimination in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities on the basis of race, color, creed, sex, sexual orientation, gender identity, national origin, religion, disability, or familial status, in violation of the ICRA.
3. Respondents acknowledge the FHA and ICRA make it unlawful to discriminate in the sale or rental of a dwelling, or otherwise make unavailable or deny a dwelling, to a buyer or renter on the basis of disability. 42 U.S.C. 3604(f)(1); Iowa Code § 216.8A(3)(a).
4. Respondents acknowledge the FHA and ICRA make it unlawful to discriminate in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with the dwelling on the basis of disability. 42 U.S.C. 3604(f)(2)(a) and Iowa Code § 216.8A(3)(b)(1)

5. Respondents acknowledge the FHA and ICRA make it unlawful to refuse to make reasonable accommodations in rules, policies, practices, or services, when the accommodations are necessary to afford person with a disability an equal opportunity to use and enjoy a dwelling. 42 U.S.C. 3604(f)(3)(b); Iowa Code § 216.8A(3)(c)(2).

6. Respondents acknowledge as owners, developers, builders, or managers of covered multifamily dwellings – ground-floor units in a building consisting of four or more dwelling units built for first occupancy after January 1, 1992 – must build those dwellings in compliance with specific design and construction accessibility requirements, in accordance with the FHA and ICRA. Iowa Code §216.8A(3)(c)(3); 42 U.S.C. §3604(f)(3)(C).

HUD has described these accessibility requirements via regulation and in several publications, including the “Final Fair Housing Accessibility Guidelines.” 24 C.F.R. Part 100.200 et seq.; 56 Fed. Reg. 9,472. In the “Guidelines,” HUD presented the seven specific requirements as:

1. Accessible building entrance on an accessible route.
2. Accessible and usable public and common areas.
3. Usable doors.
4. Accessible route into and through the covered dwelling unit.
5. Light switches, electrical outlets, thermostats and other environmental controls in accessible locations.
6. Reinforced walls for grab bars.
7. Usable kitchens and bathrooms.

Voluntary and Full Settlement

7. The parties acknowledge this Predetermination Settlement Agreement (hereinafter referred to as the Agreement) is a voluntary and full settlement of the disputed complaint. The parties affirm they have read and fully understand the terms set forth herein. No party has been coerced, intimidated, threatened, or in any way forced to become a party to this Agreement.

8. The parties enter into this Agreement in a good faith effort to amicably resolve existing disputes. The execution of this Agreement is not an admission of any wrongdoing or violation of law. Nor is the execution of this Agreement an admission by Complainant that any claims asserted in her complaint are not fully meritorious.

9. The parties agree the execution of this Agreement may be accomplished by separate counterpart executions of the Agreement. The parties agree the original executed signature pages will be attached to the body of this Agreement to constitute one document.

10. Respondents agree ICRC may review compliance with this Agreement. And as part of such review, Respondents agree ICRC may examine witnesses, collect documents, or require written reports.

Release

11. Complainant hereby waives, releases, and covenants not to sue Respondents with respect to any matters which were, or might have been alleged as charges filed with ICRC, the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, or any other anti-discrimination agency, subject to performance by Respondents of the promises and representations contained herein. Complainant agrees any complaint filed with any other anti-discrimination agency, including the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, which involves the issues in this complaint, shall be closed as Satisfactorily Adjusted.

Disclosure

12. Because, pursuant to Iowa Code §216.15A(2)(d), ICRC has not determined that disclosure is not necessary to further the purposes of the ICRA relating to unfair or discriminatory practices in housing or real estate, this Agreement is a public record and subject to public disclosure in accordance with Iowa's Public Records Law, Iowa Code Chapter 22. See Iowa Code §22.13.

Required Modifications or Retrofits

13. Respondents agree to make the following modifications or retrofits to the subject property:

Accessible and Usable Public and Common Use Areas – Mailboxes

(a) The parties agree the keyholes for each of the mailboxes in the top three rows of mailboxes in all four mailbox kiosks exceed the maximum reach requirement of 48 inches for a parallel approach, as specified in ANSI A117.1 2003. The parties agree there is no mail currently being delivered to the subject property.

(b) If mail delivery starts at the subject property, Respondents agree to modify each of the mailbox kiosks to ensure none of the mailbox keyholes exceed the height of 48 inches, as required by ANSI A117.1 2003.

Usable Doors – Door-Opening Force

(a) The parties agree the door-opening force for the doors to the rooftop patio and Unit 102 exceeded the 15-pound maximum force allowed by the Building and Zoning Administrator for the City of Ankeny, who is the “appropriate authority” on fire doors and exterior doors, per ANSI A117.1 2003.

(b) The parties agree Respondents have reduced the opening force at these doors to no more than 15 pounds to bring them into compliance with the above-stated requirements.

(c) Respondents agree to inspect the opening force at the primary-entrance door for each of the other units not inspected by ICRC investigators. For any primary-entrance door requiring more than 15 pounds of opening force, Respondents agree to reduce the opening force to bring each of those doors into compliance with the requirements referenced above.

Required Timelines for Completion of Modifications or Retrofits

14. If mail starts to be delivered to the mailbox kiosks at the subject property, Respondents agree to reduce the height of the keyholes for all mailboxes to a maximum of 48 inches within 10 days of the date that mail was first delivered.

15. Respondents agree to complete the inspection and then make all necessary adjustments so that the door-opening force to each of the units' primary-entrance doors is no greater than 15 pounds, no later than 90 days from the date on the Commission's Case Closing Letter.

Mandatory Reporting Requirements

16. If mail starts to be delivered to the mailbox kiosks at the subject property, Respondents agree to notify ICRC within 5 days from the mail start date. Respondents also agree to notify ICRC within 30 day of completing the necessary modifications to the mailbox kiosks.

17. Respondents agree to notify ICRC when they have completed the required inspections and the modifications necessary to reduce the opening force required at each of the unit's primary-entrance doors. Such notification shall be made within 30 days of completion of the modifications.

18. The sale or transfer of ownership, in whole or in part, by any owner of the subject property will not affect any obligation to modify or retrofit the subject property as specified in this Agreement, unless Respondents have obtained, in writing, as a condition of sale or transfer, the purchaser or transferee's commitment to be bound by the terms of this agreement to complete all required modifications or retrofits as specified in this Agreement.

[Please go to next page for the signature page]

Campus Town, LLC

Date

RESPONDENT

Baxter Construction Company, LLC

Date

RESPONDENT

Thomas C. Porter

Date

RESPONDENT

Angela Williams

Date

COMPLAINANT

Beth Townsend, Director

Date

IOWA CIVIL RIGHTS COMMISSION